

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
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USIA-06 OMB-01 ACDA-07 IO-13 /080 W
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FM USMISSION USBERLIN
TO SECSTATE WASHDC 4973
INFO AMEMBASSY BERLIN
AMEMBASSY BONN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1958

E.O.11652: GDS

TAGS: PGOV, WB, GW, GE, UR, FR, UR

SUBJECT: BERLIN AS A LAND OF THE FRG

REF: USBERLIN 1920

BEGIN SUMMARY. AS REFTEL REPORTS, SOVIET AMBASSADOR TO GDR, ABRASIMOV, RAISED DURING HIS 19 JULY LUNCHEON WITH BRITISH AMBASSADOR TO FRG, SIR OLIVER WRIGHT, RECENT REMARKS OF FRG STATE SECRETARY BAUM THAT BERLIN IS A LAND OF THE FRG. ABRASIMOV CRITICIZED THE REMARK AS A THREAT TO THE QUADRIPARTITE AGREEMENT (QA) OF 1971 AND TO DETENTE, AND HE CRITICIZED THE ALLIES FOR OUR FAILURE TO CORRECT IT. AMBASSADOR WRIGHT REMINDED ABRASIMOV THAT THE FRG CONSTITUTION DESCRIBES BERLIN AS A LAND OF THE FRG BUT THAT THIS PROVISION HAD NOT BEEN APPLIED TO BERLIN BY THE ALLIES. WRIGHT ADDED THAT THE ALLIES STOOD BY THE QA PROVISION WHICH STATES THAT BERLIN CONTINUED NOT TO BE A CONSTITUENT PART OF THE FRG NOT TO BE GOVERNED BY IT. END
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SUMMARY.

1. BAUM'S REMARKS WERE ALSO THE SUBJECT OF A RADIO MOSCOW COMMENTARY WHICH WAS PRINTED IN THE 19 JULY EDITION OF NEUES DEUTSCHLAND. THE COMMENTARY CONTAINED AN EXTENSIVE REPETITION OF THE SOVIET POSITION THAT THERE IS NO GREATER BERLIN, THAT THERE

IS A BERLIN, "HAUPSTADT DER DDR", WHICH IS AN INTEGRAL PART OF THE GDR AND THAT THERE IS A "WESTBERLIN" WHICH IS NOT A LAND OR OTHER CONSTITUENT PART OF THE FRG AND WHICH CANNOT BE GOVERNED BY THE FRG. THE COMMENTARY ALSO CRITICIZED THE PAST INVOLVEMENT OF THE FRG FEDERAL CONSTITUTIONAL COURT (FCC) IN BERLIN MATTERS, EMPHASIZING THAT THE FRG HAS NO AUTHORITY IN WEST BERLIN, AND THAT THE FRG OFFICIALS ACT IN ERROR WHEN THEY RELY ON FCC PRONOUNCEMENTS CONCERNING BERLIN. AN INFORMAL MISSION TRANSLATION OF THE COMMENTARY IS PROVIDED BELOW.

2. COMMENT: BAUM'S REMARKS WERE CONTAINED IN A WRITTEN STATEMENT SUBMITTED BY HIM IN RESPONSE TO THE QUESTION WHETHER BERLIN IS A LAND OF THE FRG, POSED BY FRIEDRICH ZIMMERMANS, A COMMITTEE MEMBER OF THE CDU/CSU FRAKTION IN THE BUNDESTAG. IN THE LIGHT OF THE DECISION IN THE NIEKIRSH AND BRUECKMANN CASES, BY THE FEDERAL CONSTITUTIONAL COURT IN 1967 AND 1974, RESPECTIVELY, THAT BERLIN IS A LAND OF THE FRG, BAUM HAD NO ALTERNATIVE BUT TO ANSWER AS HE DID. WHILE HIS ANSWER IS CONTRARY TO THE ALLIED VIEW ON THE APPLICABILITY OF THE FRG BASIC LAW IN BERLIN (AND THUS INCORRECT), THERE WOULD, IN USER'S VIEW, BE LITTLE PURPOSE IN OBJECTING TO BAUM'S REMARKS. SUCH REMARKS ARE MADE FROM TIME TO TIME AND THE SOVIETS

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HAVE CUSTOMARILY BROUGHT THEM TO OUR ATTENTION; HOWEVER, THE SOVIETS SHOULD BE WELL AWARE OF THE RESERVATIONS PERTAINING TO BERLIN'S STATUS AS A LAND OF THE FRG, AND WE CONSIDER AMBASSADOR WRIGHT'S ORAL RESPONSE TO ABRASIMOV AS HAVING BEEN SUFFICIENT.

3. BEGIN TEXT: PROVOCTIVE DECLARATION

ACCORDING TO PRONOUNCEMENTS OF THE FRG PRESS, THE PARLIAMENTARY STATE SECRETARY OF THE FEDERAL MINISTRY FOR THE INTERIOR, GERHARD BAUM, DECLARED IN A WRITTEN ANSWER TO A QUESTION FROM FRIEDRICH ZIMMERMAN, COMMITTEE MEMBER OF THE CDU/CSU FRAKTION IN THE BUNDESTAG THAT BERLIN IS A FEDERAL LAND (BUNDESLAND) OF THE FRG. ACCORDING TO HIS REMARKS, ALL FEDERAL AGENCIES MUST TREAT BERLIN FULLY AS A LAND OF THE FRG. BAUM AFFIRMED THAT IN THIS CASE HE REPRESENTED THE OFFICIAL POSITION OF THE FRG GOVERNMENT.

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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 1958

BAUM'S DECLARATION STANDS IN DIRECT CONTRADICTION
TO THE EXISTING LEGAL AND POLITICAL REALITY IN
CENTRAL EUROPE AS WELL AS CURRENT INTERANTIONAL LAW.
AS IS WELL KNOWN, AN UNDIVIDED (EINHEITLICHES)
BERLIN HAS NOT EXISTED FOR A LONG TIME. THERE IS
BERLIN, THE CAPITAL OF THE GDR, AND THERE IS
"WESTBERLIN". THE CAPITAL OF THE GDR IS AN IN-
SEPARABLE COMPONENT OF THE GDR. TO SPEAK OF ITS
BELONGING TO THE FRG IS SIMPLY ABSURD.

AS FAR AS WESTBERLIN IS CONCERNED, THE FOUR
POWER AGREEMENT OF 3 SEPTEMBER 1971
CLEARLY AND DISTINCLTY ESTABLISHES (OR SETTLES-
FIXIERT) THAT WESTBERLIN IS NOT A FEDERAL LAND NOR
OTHER CONSTITUENT PART OF THE FRG, AND IT CANNOT
BE GOVERNED BY THE FRG. THIS DETERMINATION WAS TAKEN
OVER INTO THE TEXT OF THE AGREEMENT WITH DIRECT
REFERENCE TO THE CONSULTATIONS AND AGREEMENTS OF THE
THREE WESTERN PARTIES TO THE FOUR POWER AGREEMENT
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WITH THE FRG.
IT IS SCARCELY TO BE BELIEVED THAT THIS IS

UNKNOWN TO MR. BAUM. THE STATE SECRETARY IS NO NEW-COMER TO POLITICS; FOR THAT REASON THE QUESTION QUITE PROPERLY ARISES: WHY DOES HE HAVE RECOURSE TO SUCH A DEMONSTRATIVE FALSIFICATION OF THE FACTS? WHAT GOALS DOES HE PURSUE BY SUCH ACTIONS? IN HIS ANSWER MR. BAUM REFERS TO A 31 JULY 1973 DECISION OF THE FRG FEDERAL CONSTITUTIONAL COURT. IT IS RECALLED HERE THAT HIS DECISION WAS RECEIVED IN CONNECTION WITH A COMPLAINT FROM THE GOVERNMENT OF BAVARIA WHICH DEMANDED THAT THE AGREEMENT ON THE BASIS OF RELATIONS BETWEEN THE GDR AND FRG, WHICH WAS SIGNED 21 DECEMBER 1972 IN THE CAPITAL OF THE GDR, BERLIN (IN DER HAUPTSTADT DER DDR, BERLIN), BE DECLARED NULL AND VOID.

THE JURIDICALLY FULLY UNSUPPORTABLE COMPLAINT WAS REFUSED BY THE FRG FEDERAL CONSTITUTIONAL COURT. REGRETTABLY, HOWEVER, THE COURT DID NOT CONFINE ITSELF TO A DECISION ON THE SUBSTANCE OF THE MATTER, BUT ENTERED UPON THE ROAD OF QUESTIONABLE INTERPRETATIONS OF INTERNATIONAL AGREEMENTS CONCLUDED BY THE FRG. AMONG OTHER THINGS THE COURT WANTED TO TAKE A POSITION ON THE WESTBERLIN-PROBLEM, ON WHICH THE COURT IN ITS DECISION WROTE THAT WESTBERLIN IS A LAND OF THE FRG. NOW, BAUM DECLARES THAT THIS ASSERTION OF THE FEDERAL CONSTITUTIONAL COURT IS BINDING ON THE FEDERAL GOVERNMENT.

NONETHELESS, THE STATE SECRETARY OF THE FEDERAL MINISTRY FOR THE INTERIM SHOULD KNOW: THE STATUS OF WESTBERLIN IS UNDER NO CIRCUMSTANCES TO BE DETERMINED BY THE FEDERAL CONSTITUTIONAL COURT. WESTBERLIN DOES NOT BELONG TO THE JURISDICTION OF THE
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FEDERAL CONSTITUTIONAL COURT, AND THE COURTS' DECISION IN THIS QUESTION HAVE NO LEGAL FORCE. THE STATUS OF WESTBERLIN IS DETERMINED BY THE WARTIME AND POST-WAR TIME AGREEMENTS AND DECISIONS OF THE USSR, USA, UK, AND FRANCE. THE DETERMINATIONS OF THE FOUR POWER AGREEMENT OF 3 SEPTEMBER 1971, UNDER WHICH WESTBERLIN DOES NOT BELONG TO THE FRG AND CANNOT BE GOVERNED BY IT, IS CURRENT INTERNATIONAL LAW. THEY (DETERMINATIONS) HAVE BINDING LEGAL EFFECT ALSO ON THE FRG GOVERNMENT. THAT FOLLOWS DIRECTLY FROM ARTICLE 25 OF THE FRG BASIC LAW IN WHICH THE NORMS OF INTERNATIONAL LAW ARE DECLARED AS COMPONENTS OF FEDERAL LAW, AND IT IS INDICATED THAT THEY HAVE PRECEDENCE OVER FRG LAWS.

WEST GERMAN POLITICIANS LIKE TO TALK ABOUT HOW USEFUL AND NECESSARY IT IS TO ADHERE TO THE FOUR POWER AGREEMENT. IN REALITY, HOWEVER, THEY BEHAVE

DIFFERENTLY. THE STATEMENT OF MR. BAUM BEARS FURTHER
WITNESS TO THAT; IT IS A STATEMENT WHICH ONE CAN EVALUATE
AS A PROVOCATIVE DECLARATION, AS A CALL TO DAMAGE
THE KEY DECISIONS OF THE FOUR POWER AGREEMENT.
DECLARATIONS OF THAT KIND ARE MET UNHESITATINGLY
WITH PREEMPTORY CONDEMNATION BY ALL WHO ARE INTERESTED
IN THE MAINTENANCE OF A NORMAL, QUIET SITUATION AROUND
WESTBERLIN. END TEXT. GEORGE

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